

CONFERENCE COMMITTEE SUBSTITUTE

FOR

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FOR

HOUSE BILL NO. 228

AN ACT

To amend chapter 407, RSMo, by adding thereto four new sections relating to unsolicited commercial electronic mail, with penalty provisions.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Chapter 407, RSMo, is amended by adding thereto four new sections, to be known as sections 407.1135, 407.1144, 407.1147, and 573.052, to read as follows:

407.1135. As used in sections 407.1135 to 407.1147, the following words and phrases mean:

(1) "Commercial electronic mail", an electronic mail message sent for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services;

(2) "Electronic mail address", a destination, commonly

expressed as a sequence of characters, to which commercial electronic mail may be sent or delivered;

(3) "Established business relationship", an existing relationship formed by a voluntary communication between a person or entity and the recipient with or without an exchange of consideration, on the basis of an inquiry, application, purchase, or use by the recipient regarding products or services offered by such person or entity;

(4) "Initiate the transmission", the action by the original sender of an unsolicited commercial electronic mail solicitation that results in receipt by a subscriber of that solicitation, including commercial electronic mail received by a subscriber which was sent by a third party at the request of or direction of the original sender;

(5) "Subscriber", any person, corporation, partnership, or other entity who has subscribed to an interactive computer service and has been designated with one or more electronic mail addresses;

(6) "Unsolicited commercial electronic mail", a commercial electronic mail message sent without the consent of the recipient, by a person with whom the recipient does not have an established business relationship, other than:

(a) A commercial electronic mail message responding to an inquiry from a subscriber who has requested further information

and provided a commercial electronic mail address;

(b) A commercial electronic mail message initiated by a person licensed by the state of Missouri to carry out a trade, occupation, or profession who is setting or attempting to set an appointment for actions related to that licensed trade, occupation, or profession;

(c) A commercial electronic mail message sent to a subscriber that was in a direct business relationship with the sender, including a parent or subsidiary business organization of the sender that shares the same brand name, within the previous twenty-four months unless the recipient requests to be removed from the entity's electronic mail list in accordance with section 407.1123;

(d) A commercial electronic mail communication sent to a subscriber from an original sender which is a bank, farm credit service, or credit union shall not be considered unsolicited commercial electronic mail for purposes of section 407.1135 to 407.1147;

(e) A commercial electronic mail message that is sent to a subscriber from an original sender who has a personal relationship with the subscriber; or

(f) A commercial electronic mail message from the original sender that is indirectly received by a subscriber when another subscriber voluntarily forwards that communication without the

knowledge of the original sender and without any consideration provided by the original sender to the subscriber forwarding the communication.

407.1144. 1. It shall be a violation of this section for any person or entity who initiates the transmission of any commercial electronic mail message to any subscriber in this state to provide a false identity or false or misleading information in the subject line.

2. It shall be a violation of this section for any person that sends an unsolicited commercial electronic mail message to fail to use the exact characters "ADV:" as the first four characters in the subject line of the unsolicited commercial electronic mail message.

3. It shall be a violation of this section for any person that sends an unsolicited commercial electronic mail message that contains obscene material as defined in section 573.010, RSMo, or references a web site that contains obscene material to fail to use the exact characters "ADV:ADLT" as the first eight characters in the subject line of the unsolicited commercial electronic mail message that contains obscene material.

4. It shall be a violation of this section to initiate the transmission of any unsolicited commercial electronic mail to a subscriber in this state who has notified a sender not to initiate the transmission of any further unsolicited commercial

electronic mail. For purposes of this subsection, a subscriber is deemed to have notified a sender not to initiate the transmission of any further unsolicited commercial electronic mail if the subscriber:

(1) Replies to a sender at the valid sender-operated return electronic mail address or the sender's toll-free telephone number with directions not to initiate the transmission of any further unsolicited commercial electronic mail as provided in section 407.1123; or

(2) Otherwise gives actual notice to a sender not to initiate the transmission of further unsolicited commercial electronic mail; or

(3) Notifies the attorney general if a sender fails to provide a toll-free telephone number or valid sender-operated return electronic mail address as required by section 407.1123.

5. The attorney general shall promulgate rules and regulations as he or she deems necessary and appropriate to fully implement the provisions of sections 407.1135 to 407.1147.

407.1147. 1. The attorney general may initiate proceedings relating to a knowing violation of sections 407.1135 to 407.1147. Such proceedings may include an injunction, a civil penalty up to a maximum of five thousand dollars for each knowing violation, not to exceed twenty-five thousand dollars per day, in any court of competent jurisdiction. The attorney general may issue

investigative demands, issue subpoenas, administer oaths, and conduct hearings in the course of investigating a violation of sections 407.1135 to 407.1147.

2. In addition to the penalties provided in subsection 1 of this section, any person or entity that violates sections 407.1135 to 407.1147 shall be subject to all penalties, remedies and procedures provided in sections 407.010 to 407.130. The remedies available in this section are cumulative and in addition to any other remedies available by law. Any civil penalties recovered pursuant to this section shall be credited to the merchandising practices revolving fund.

3. It shall be a defense in any action or proceeding brought pursuant to this section that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent the transmission of unsolicited commercial electronic mail messages in violation of section 407.1144.

4. No action or proceeding may be brought pursuant to this section:

(1) More than two years after the person bringing the action knew or should have known of the occurrence of the alleged violation; or

(2) More than two years after the termination of any proceeding or action arising out of the same violation or

violations by the state of Missouri, whichever is later.

5. A court of this state may exercise personal jurisdiction over any nonresident or his or her executor or administrator as to an action or proceeding authorized by this section in the manner otherwise provided by law.

6. No telecommunications utility, electronic mail service provider, or internet service provider shall be liable for violations of section 407.1144 when:

(1) It is an intermediary between the sender and recipient in the transmission of an email that violates sections 407.1135 to 407.1147; or

(2) It provides transmission of unsolicited commercial electronic mail messages over the provider's computer network or facilities; or

(3) It voluntarily takes action in good faith to block the receipt or transmission through its service of any electronic mail advertisements that it believes are, or will be, sent in violation of sections 407.1135 to 407.1147.

573.052. Upon receipt of any information that child pornography as defined in section 573.010 is contained on a web site, the attorney general shall investigate such information. If the attorney general has probable cause to believe the web site contains child pornography, the attorney general shall notify a web site operator of any child pornography site residing

on that web site operator's server, in writing. If the web site operator promptly, but in no event longer than five days after receiving notice, removes the alleged pornography from its server, and so long as the web site operator is not the purveyor of such child pornography, it shall be immune from civil liability. If the web site operator does not promptly remove the alleged pornography, the attorney general may seek an injunction pursuant to section 573.070 to remove the child pornography site from the web site operator's server. This section shall not be construed to create any defense to any criminal charges brought pursuant to this chapter or chapter 568, RSMo.

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